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AUTHOR Lodwick, David
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ABSTRACT

The "Texaco" copyright litigation resulted in new rules governing photocopying of journal articles in special libraries affiliated with for-profit enterprises. The federal court decisions in "Texaco" begin with the premise that research in those libraries serves a profit-seeking motive, and consequently the courts have indicated that photocopying of journal articles in such special libraries will generally not be protected under the doctrine of "fair use." A random sample of 200 special libraries affiliated with for-profit enterprises was selected from across the United States. Each head librarian was asked whether he or she was aware of the "Texaco" decisions and, if so, what actions the library had taken in response to the rulings. Responses to the written questionnaire showed that more than 80% of the respondents were familiar with the "Texaco" rulings. Of those, more than half have purchased photocopying licenses from the Copyright Clearance Center. A variety of other reactions, such as obtaining journal articles through a commercial document delivery service, also were reported. No single solution was dominant in the responses; instead, it appears that the affected libraries are mixing and matching remedies in an effort to achieve overall compliance with the copyright laws. The survey cover letter and questionnaire are appended. (Contains 39 references.) (Author)

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REACTION TO THE TEXACO FAIR USE RULING AMONG SPECIAL LIBRARIES AFFILIATED WITH FOR-PROFIT ENTERPRISES

A Master's Research Paper submitted to the
Kent State University School of Library Science
in partial fulfillment of the requirements
for the degree Master of Library Science

by

David Lodwick

July, 1996

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ABSTRACT

The Texaco copyright litigation resulted in new rules governing photocopying of journal articles in special libraries affiliated with for-profit enterprises. The federal court decisions in Texaco begin with the premise that research in those libraries serves a profit-seeking motive, and consequently the courts have indicated that photocopying of journal articles in special libraries affiliated with for-profit enterprises will generally not be protected under the doctrine of "fair use."

A random sample of 200 special libraries affiliated with for-profit enterprises was selected from across the United States. Each head librarian was asked whether he or she was aware of the Texaco decisions and, if so, what actions the library had taken in response to the Texaco rulings. Responses to the written questionnaire showed that more than 80% of the respondents were familiar with the Texaco rulings. Of those, more than half have purchased photocopying licenses from the Copyright Clearance Center. A variety of other reactions, such as obtaining journal articles through a commercial document delivery service, also were reported. No single solution was dominant in the responses; instead, it appears that the affected libraries are mixing and matching remedies in an effort to achieve overall compliance with the copyright laws.

Master's Research Paper by

David Lodwick

B.A., Western Reserve College

J.D., Cleveland-Marshall College of Law

M.L.S., Kent State University, 1996

Approved by

Advisor _____ Date 7/15/96

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CHAPTER I - STATEMENT OF THE PROBLEM

Background

Donald Chickering, II, has a Ph.D. in chemical engineering. In 1985, Dr. Chickering was working on laboratory experiments at a Texaco research center in Beacon, New York. His specialty was catalysis, the "phenomenon in which a relatively small amount of foreign material called a catalyst augments the rate of a chemical reaction without itself being consumed."[1] At the time, it seemed highly unlikely that he would become a central figure in one of the most significant copyright lawsuits in history.

Journals that were related to Dr. Chickering's scientific work were routed to him by the research center's library. When he came across something interesting, Dr. Chickering had the library photocopy the article for him, or else he made a copy himself. Some of the articles were pertinent to his current research; others related to projects that he anticipated undertaking in the future.

Texaco was sued in 1985 by a group of publishers, who claimed that Texaco had violated the Copyright Act by copying articles without permission. Texaco replied that its photocopying was a reasonable and customary practice at scientific research centers, and that copying was permitted by the doctrine of "fair use." The law allows photocopying of copyrighted material if the material is used for purposes such as teaching, scholarship, or research, and if the particular use is a "fair" use. The latter question requires a court to weigh four factors and decide whether the scales tip for or against fair use.[2]

Texaco and the publishers agreed that a test case would be used to resolve the issue of fair use. Donald Chickering was chosen to be the test case. After a painstaking review of Dr. Chickering's use of articles from the Journal of Catalysis, a federal district judge in New York determined in July 1992 that Texaco's use of photocopied journal

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articles was not a fair use.[3] The judge's decision reflected his findings[4] on the four factors:

(1) Character of the use. Texaco's reseach was intended to increase corporate profits, and the journal articles were not "transformed" into something new and different. (One point for the publishers.)

(2) Nature of the material. The articles were predominantly factual in nature, and therefore entitled to less copyright protection than fictional material. (One point for Texaco.)

(3) Amount of material used. When Dr. Chickering saw something interesting, he copied the entire article, not just a relevant part of it. (Another point for the publishers.)

(4) Effect on the copyright's value. The publisher's revenues would have been larger if, instead of making photocopies, Texaco had ordered additional subscriptions, or paid license fees for copying, or obtained copies from a document delivery service that in turn paid royalties to publishers. (Match point for the publishers.)

Texaco appealed the ruling to the United States Court of Appeals for the Second Circuit, in New York. Several library associations, including the American Library Association, the Association of Research Libraries, and the Special Libraries Association, supported Texaco's position, arguing that the trial court had unreasonably narrowed the scope of fair use. More than two years passed before the court of appeals issued its decision. By a vote of 2-1, it ruled that Dr. Chickering's photocopying was not fair use. The publishers won again.

Both sides had previously vowed to carry the fight all the way to the United States Supreme Court, but after losing for the second time Texaco elected to settle the case by paying more than $1 million to the publishers and buying licenses to allow photocopying by its researchers. Texaco has ended its dispute with the publishers, at least for now. But questions remain for special libraries affiliated with for-profit enterprises.

The two judges who formed the majority in the appeals court viewed Texaco's options as fairly straightforward: Texaco could either pay for a photocopying license

through the Copyright Clearance Center ("CCC") to allow unlimited photocopying of CCC materials, or else it could buy additional copies of the journals and distribute individual issues directly to its researchers. The dissenting judge, however, predicted "potentially uncontrolled ramifications"[5] from the court's decision. Is a corporate library still allowed to circulate journals to its researchers? Can the library buy reprints of articles? Would it? Why is the institutional subscription price of the Journal of Catalysis double the individual rate? Is the Copyright Clearance Center really a workable mechanism to collect license fees for photocopying? What about the 70% of Texaco's journals that were not covered by CCC licenses? Must a library negotiate separate licenses for those journals? What about individual articles that are not copyrighted at all? Will license fees be paid anyway, for the sake of convenience? What will happen to scientific research when the researchers are bogged down in copyright issues instead?

Additional questions and proposed solutions have been raised by numerous commentators in library-related publications.

Purpose of the Study

This study examines the ways in which special libraries affiliated with for-profit enterprises are actually reacting to the Texaco ruling. Questions to be addressed include what changes (if any) the libraries are considering, or have already implemented, in their internal policies concerning photocopying and journal articles, as well as a more basic question: Are some special libraries continuing business as usual because they are unaware of the Texaco ruling?

Definition of Terms

For purposes of this study, "fair use" is used to refer to a legal doctrine which allows the use of copyrighted material without permission from the copyright owner, if certain legal prerequisites (described at 17 U.S.C. section 107) are satisfied.

"Photocopying" refers to in-house duplication of printed materials by employees of a for-profit enterprise.

A "for-profit enterprise" is a corporation or other business entity that attempts to produce a profit, whether or not it succeeds in doing so.

Limitations of the Study

Although commentators have suggested that the effect of the Texaco decision will be felt by academic and public libraries,[6] this study is limited to special libraries. It is further limited to the group most immediately affected -- special libraries associated with for-profit enterprises, such as the library at Texaco's research center. The findings are not necessarily generalizable to other types of libraries in other settings. And, although the study is nationwide in scope, it focuses on a sample of the population rather than attempting to elicit a response from every special library associated with any for-profit enterprise.

The study is further limited because, by definition, it only addresses reaction to the Texaco fair use rulings. It does not attempt to comprehensively catalog the full range and history of serial selection, routing, photocopying policy, etc., in special libraries. Rather, it asks only what actions, if any, the libraries have taken <u>because of</u> the courts' rulings.

CHAPTER II - REVIEW OF THE LITERATURE

Initially, the Texaco copyright case drew relatively little attention. The announcement by the Association of American Publishers that it had filed a "major copyright suit" against Texaco in 1985 was noted by Library Journal in a one-sentence news blurb.[7] Everyone promptly lost interest until the summer of 1992, when Judge Pierre Leval shocked the library world by ruling that Texaco's photocopying was not fair use.[8] The initial responses included alarm, outrage, and despondency among librarians. Barbara Quint wrote,"The world has ended."[9] Sarah Wiant concluded that fair use in the for-profit context had been rendered "virtually meaningless."[10] Former ALA president Patricia Berger cautiously concluded, "The long-term effect could be worrisome."[11] The judge's reasoning was criticized by Laura Gasaway: "He's saying a researcher photocopying for himself or herself isn't fair use, and if that's not fair use, then I don't know what is."[12] Some observers hoped that the decision would be reversed by the court of appeals or the Supreme Court.[13]

Reaction to the Texaco decision (and its affirmance on appeal) was not limited to librarians. Articles in Science described the dismay felt by research scientists who feared being sued for engaging in a common practice -- photocopying articles from scientific journals -- and predicted a possible "chilling effect" on scientific research generally.[14] Meanwhile, the president of the American Council of Learned Societies expressed concern that copyright law was moving "in a direction that is likely to raise the cost of information and restrict the very availability of information."[15]

Many critics complained that the Texaco ruling was unclear, and failed to provide adequate guidance on how other libraries and researchers could avoid Texaco's fate.[16] Even the victorious publishers were concerned that the rule had not been explained more plainly by the court.[17] Nonetheless, a variety of proposals and predictions have been offered:

* Libraries should review their current copyright policies and adopt new policies that are designed to ensure compliance with the law.[18]

* At a minimum, the policy should require signs at all photocopy machines reminding employees that unauthorized photocopying may have legal repercussions,[19] and may also include educational programs to inform employees about copyright basics.[20]

* Some corporate[21] and law firm[22] libraries have reportedly banned all internal photocopying of copyrighted works. (An anecdotal account of widespread copyright infringement in law firms had previously been published.)[23]

* The Copyright Clearance Center assumed that its list of licensees would grow rapidly as a result of the decision;[24] the British Library, for one, announced that it would no longer provide royalty-free photocopy service to United States libraries, and would instead pay fees to the CCC.[25]

* Critics of the CCC insist that it does not provide an effective way for scientific researchers to get all the journal articles they need.[26]

* Librarians have been urged to lobby for new copyright legislation,[27] and to get involved in the creation of new copyright laws.[28]

*Some have predicted that scientific authors will leave print publishers behind, and distribute their work via electronic journals over the internet.[29] Others question the practicality of that solution.[30]

* Will libraries stop routing journals?[31] Can they route title pages, tables of contents, or abstracts?[32]

* Libraries might increase the number of subscriptions they buy.[33] Alternatively, librarians might cancel journal subscriptions, reasoning that "there is no reason to pay for a subscription if they cannot make photocopies from the issues without paying additional royalties."[34]

* Will libraries decide to obtain journal articles through authorized document delivery services,[35] through interlibrary loan,[36] by negotiating directly with publishers[37] or authors,[38] by obtaining reprints or back issues,[39] or through full-text online services?[40]

* Or will for-profit enterprises decide to simply close their special libraries?[41]

The existing literature that pre-dates Texaco is relatively sparse. A 1976 survey of photocopying procedures in special libraries was marred by a low response rate (less than 18%) and problems in interpreting the data.[42] A study of compliance with copyright law by health science libraries concluded that overall compliance in 1981 was "very good," despite the fact that "most health science librarians seem to agree that the law is 'just an annoyance.'"[43] Lee Nemchek published her study of copyright compliance by law firms in 1991, concluding that "most law firms have not developed copyright compliance policies."[44] Nemchek's work was replicated by Alicia Kehrig in 1993; Kehrig found that only 12.6% of law library respondents were registered with the Copyright Clearance Center, and only 22% had written policies regarding copyright law compliance.[45]

In light of the seven-figure payment made by Texaco after years of litigation, the copyright law can no longer be viewed as "just an annoyance." There has been much speculation about what might happen next. Public fora have been established to solicit comments about the copyright law[46] and its effects on science and scholarly publishing,[47] but no systematic study has documented the ways in which special libraries are reacting to the copyright issues raised in Texaco.[48] This study attempts to fill that void.

CHAPTER III - METHODOLOGY

The basic purpose of a descriptive survey is to describe characteristics of the population being studied, using data drawn from a representative sample of that

population. The population being studied is special libraries affiliated with for-profit enterprises, in the United States. The population was culled from the 1994 edition of the Directory of Special Libraries and Information Centers,[49] extracting only those libraries which are affiliated with for-profit enterprises. Special libraries affiliated with publishing companies were excluded from the population because their perspective on fair use issues is presumably tied to the self-interest of their parent institutions, many of which were plaintiffs in the Texaco litigation. Newspaper publishers were not excluded. Those libraries that did not employ a professional librarian, or did not subscribe to at least ten journals, were also excluded from the population. Law firm libraries have been studied elsewhere and have therefore been excluded from this study. Law libraries in a corporate setting were not excluded.

The resulting alphabetical (A-Y) list of special libraries affiliated with for-profit enterprises was then systematically sampled[50] (choosing every k^{th} entry from the list) to yield a random sample of 200 questionnaire recipients.[51] Questionnaires were sent to 37 states ranging from Hawaii to Florida, plus the District of Columbia. Recipients included, for example, accounting firms, environmental consultants, insurance companies, and manufacturers of chemicals, food, clothing, computers, and cosmetics. Some were multinational corporations; others were relatively small businesses.

A written questionnaire was mailed to the head librarian at each of the 200 special libraries in the sample (the questionnaire and cover letter are attached as Appendix A). The date of mailing was June 6, 1996. Survey respondents were first asked whether they had heard or read about federal court decisions concerning the scope of fair use when photocopying journal articles. (It was anticipated that some librarians would not connect the case with Texaco, but would have some familiarity with "that copyright case.") For those who were unaware of the legal developments in Texaco, the questionnaire terminated at this point. But those who were familiar with recent developments in fair use law (the "Texaco-aware group") were then asked to mark their responses to those

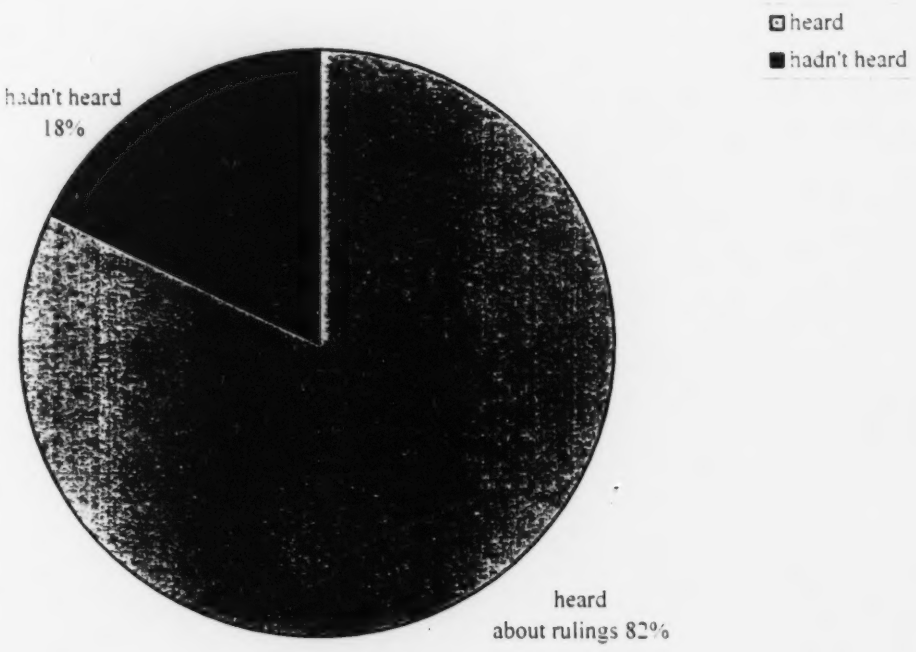
legal developments, on a checklist of 22 possible reactions. The listed reactions, which were drawn for the most part from published commentary on the potential impact of the Texaco case, ranged from "*Stop routing journals*" to "*Close the library.*" For each listed reaction, such as "*Stop routing journals*," the respondent was asked to check "*Did it*" or "*Considering it*," or to leave the item blank if the respondent library had not stopped routing journals in response to the Texaco rulings and was not contemplating that step. (No assumption is made that, because the item was left blank, routing continues -- the purpose of the study is to determine how special libraries are reacting to the Texaco rulings, not to catalog their internal operating procedures regarding serials.) Open-ended questions solicited any reactions other than those listed.

A return rate of 50 percent was considered desirable,[52] but was not achieved. Results have been coded and tabulated. Frequencies have been converted to percentages. A narrative summary and analysis accompany the data. Responses to the open-ended questions have been reviewed for significant trends or unexpected reactions. The number of respondents who were unaware of any legal developments (and therefore did not react) was also tallied and analyzed. Conclusions are stated, along with suggestions for additional research.

CHAPTER IV - FINDINGS

Of the 200 members of the sample group, 67 (33.5%) returned usable responses. Of those 67 respondents, 12 (18%) had not heard or read anything about federal court decisions concerning the scope of fair use when photocopying journal articles, and had not reacted to those decisions in any way. (See Figure 1.)

Fig. 1. Familiarity with Texaco



Fifty-five of the respondents (82%) were familiar with the Texaco decisions. The reactions of those respondents (the "Texaco-aware group") covered almost the entire spectrum of anticipated responses. A review of those reactions logically begins with the issue considered pivotal by the Texaco appellate court majority: Have the libraries purchased photocopying licenses from the Copyright Clearance Center? Or have they ordered multiple subscriptions of journals for internal distribution?

Thirty-three of the 55 Texaco-aware respondents (60%) reported that they have purchased (or are considering purchasing) CCC licenses in response to the Texaco rulings. To reitierate a point made above, this does not mean that the remaining 40% do not have CCC licenses. It only means that they have not purchased licenses as a reaction to the Texaco rulings.[53] (Four respondents commented that they already had CCC licenses.) Some of the comments indicated, however, that the mere possession of a CCC license was not a complete solution. Several CCC members noted that they have labeled

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non-CCC journals and restricted copying of those journals. Another respondent complained that CCC doesn't cover enough of the journals and newsletters used by researchers at that library.

The other solution proposed by the Texaco court -- multiple subscriptions -- was somewhat less popular with the respondent libraries. Twenty (36%) have ordered additional subscriptions of journals, for internal distribution.[54] The survey does not indicate, however, that libraries are making an either/or choice between the CCC license and multiple subscriptions. Of the libraries that responded to the Texaco decision by ordering multiple subscriptions, 15 (75%) also bought CCC licenses. (In these cases, the multiple subscriptions may be limited to non-CCC journals.)

Other reactions are summarized here. It should be noted that items on the questionnaire checklist were not necessarily mutually exclusive, and most respondents checked several entries -- not just one -- from the list of possible reactions. In fact, 27 of the Texaco-aware respondents (49%) reported that they had already put into practice six or more of the proposed reactions on the checklist, and nine respondents (16%) had tried 10 or more of the listed responses.

The most prevalent reaction among the Texaco-aware respondents was to use a document delivery service. Thirty-seven libraries (67%) reported that they had begun to obtain journal articles from commercial document delivery services. One respondent commented that it already had been using a document delivery service, but has increased its use in response to Texaco. Comments indicated that the document delivery service is expected to pay the copyright fee and pass that expense through to the library. Once again, though, the use of a document delivery service is rarely viewed as an all-encompassing response to Texaco. Of the libraries that have begun using a commercial document delivery service, 24 (65%) have also purchased a CCC license.

Thirty-three respondents (60%) have explored online full-text article databases. Twenty-eight (51%) have ordered reprints of articles. Twenty-three (42%) have explored

the availability of electronic (Internet) journals, or are considering it. Another 23 have established, or are considering, new internal policies or procedures concerning photocopying. Eighteen (33%) have tried negotiating photocopying permission directly with a publisher. Another nine (16%) have negotiated permission directly with an author. Sixteen (29%) have ordered back issues of journals.

Fifteen (27%) have conducted, or are considering, educational seminars for employees regarding copyright. (Other media, besides seminars, were noted in the comments: One library used the employee newsletter to get the message out; another distributed memos from the corporate law department; one presented a panel discussion; yet another uses educational videotapes to explain copyright issues.)

The respondents differed in their view of the interrelationship of copyright restrictions and interlibrary loan. Thirteen (24%) said they had increased their use of interlibrary loan because of Texaco; on the other hand, five respondents (9%) said they decreased their ILL activity.

All participants were asked whether they had contacted outside agencies about the copyright law, in light of the Texaco rulings. Twelve (22%) had contacted a library association; four (7%) had contacted a scientific or trade association, and two respondents (4%) had directly contacted a legislator.

Predictions that libraries would cancel subscriptions were borne out, to a degree. Nine libraries (16%) reported that they had cancelled one or more journal subscriptions because of Texaco. Another seven libraries (13%) have encouraged individual researchers to buy their own personal subscriptions.

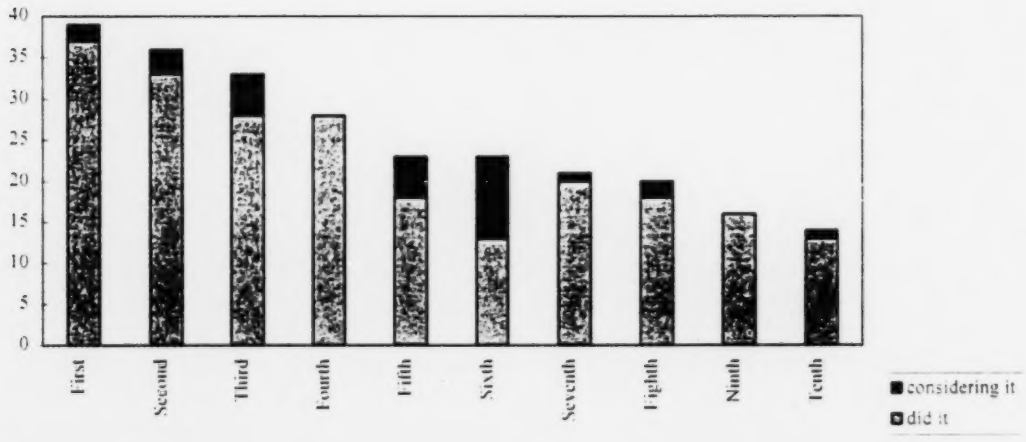
Four libraries (7%) reported that they have stopped routing journals. Five (9%) have stopped routing tables of contents (one respondent commented that it had begun using Carl Uncover to distribute table-of-contents information).

Of the available responses, only two were not selected by any respondent. No respondent library has yet banned all photocopying by non-librarians in response to

Texaco -- but one is considering it. And no respondent reported that its parent institution had closed the library or was considering closing the library. (However, two of the questionnaires that were returned to sender indicated that the recipient companies no longer employed a "head librarian.")

The ten most frequent reactions among the Texaco-aware group are shown in Figure 2.

Fig. 2 Ten most frequent reactions



First - Obtain journal article from a commercial document delivery service.
Second - Explore online full-text article databases.
Third - Purchase a photocopying license from Copyright Clearance Center.
Fourth - Order reprints of articles.
Fifth - Establish new internal photocopying policies or procedures.
Sixth - Explore the availability of electronic (Internet) journals.
Seventh - Order multiple subscriptions of journals, for internal distribution.
Eighth - Negotiate photocopying permission directly with a publisher.
Ninth - Order back issues of journals.
Tenth - Increase use of interlibrary loan.

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A more complete summary of the data gathered in this study follows:

1. Have you heard or read about federal court decisions concerning the scope of fair use when photocopying journal articles (American Geophysical Union v. Texaco Inc.)?

Yes: 55 No: 12

2. Has your library taken any of the following actions <u>in response to developments in fair use law</u> since 1992? Alternatively, are any of these actions in the planning stage or under consideration at your library?

a. Stop routing journals.

Did it: 4 Considering it: 1

b. Stop routing tables of contents, title pages, or abstracts.

Did it: 5 Considering it: 1

c. Ban all photocopying by non-librarians.

Did it: 0 Considering it: 1

d. Purchase a photocopying license from Copyright Clearance Center.

Did it: 28 Considering it: 5

e. Negotiate photocopying permission directly with a publisher.

Did it: 18 Considering it: 2

f. Negotiate photocopying permission directly with an author.

Did it: 9 Considering it: 1

g. Order multiple subscriptions of journals, for internal distribution.

Did it: 20 Considering it: 1

h. Encourage researchers to order their own personal subscriptions.

Did it: 7 Considering it: 3

i. Cancel (one or more) journal subscriptions.

Did it: 9 Considering it: 1

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j. Explore the availability of electronic (Internet) journals.

Did it: 13 Considering it: 10

k. Obtain journal articles from a commercial document delivery service.

Did it: 37 Considering it: 2

l. Explore online full-text article databases.

Did it: 33 Considering it: 3

m. Contact a legislator about the copyright law.

Did it: 2 Considering it: 2

n. Contact a library association about the copyright law.

Did it: 12 Considering it: 1

o. Contact a scientific or trade association about the copyright law.

Did it: 4 Considering it: 1

p. Order reprints of articles.

Did it: 28 Considering it: 0

q. Order back issues of journals.

Did it: 16 Considering it: 0

r. Establish new internal photocopying policies or procedures.

Did it: 18 Considering it: 5

s. Conduct educational seminars for employees concerning copyright.

Did it: 10 Considering it: 5

t. Increase use of interlibrary loan.

Did it: 13 Considering it: 1

u. Decrease use of interlibrary loan.

Did it: 5 Considering it: 0

v. Close the library.

Did it: 0 Considering it: 0

CHAPTER V - SUMMARY & CONCLUSIONS

This study set out to determine whether special libraries affiliated with for-profit enterprises were aware of federal court rulings which significantly affect the ability of those libraries to make "fair use" photocopies of journal articles. In addition, the study explored the ways in which libraries have reacted to the courts' rulings in the Texaco litigation. A written questionnaire was mailed to head librarians at 200 randomly selected special libraries affiliated with for-profit enterprises throughout the United States. The questionnaire asked whether the respondent was aware of legal developments concerning fair use. If the response was Yes, the library was asked to indicate how it had reacted -- if at all -- to the Texaco rulings. A checklist of possible reactions (ranging from *Stop routing journals* to *Close the library*) was provided, and respondents were encouraged to report other reactions in a Comments section. Sixty-seven usable responses were received and tallied.

More than 80% of the respondents were aware of the courts' rulings in Texaco, and most them have reacted to Texaco by modifying their internal policies and procedures concerning the photocopying of journal articles. The majority of Texaco-aware respondents have taken the path predicted by the majority on the court of appeals; that is, they have paid a fee to the Copyright Clearance Center for the privilege of photocopying their own journals in-house. But the response was anything but uniform. The repondents have also taken a wide variety of other measures in their efforts to deal with the Texaco rulings. Several respondents checked off 10 or more of the listed reactions on the questionnaire, suggesting that libraries are exploring various methods and combining strategies to cope with the new rules governing fair use.

Despite substantial publicity in recent years, several of the respondents had never heard of Texaco and were unaware of recent legal developments in the scope of fair use for special libraries affiliated with for-profit enterprises. These libraries have,

consequently, not reacted in any way. They may wind up as defendants in the next round of fair use litigation, if journal publishers continue to aggressively enforce their rights under the copyright law.

As noted, this study focused only on whether or not respondents were aware of the legal developments contained in the Texaco decisions, and how they reacted to those developments. A larger scale study, representing the full scope of current practice and copyright compliance within special libraries, remains to be done.

END NOTES

[1]Sybil Parker, ed. McGraw-Hill Concise Encyclopedia of Science & Technology, 3d ed. (New York: McGraw-Hill, 1994), s.v. "Catalysis," by Robert Burwell.

[2]U.S. Code, vol. 17, sec. 107 (1996).

[3]American Geophysical Union v. Texaco Inc., 802 F. Supp. 1 (S.D.N.Y. 1992).

[4]Needless to say, Texaco disputed these findings.

[5]American Geophysical Union v. Texaco Inc., 60 F.2d 913, 935 (2nd Cir. 1994).

[6]See, for example, Laura Gasaway, "Copyright: where is the Texaco decision?" Bulletin of the Medical Library Association 82 (July 1994): 329-331.

[7]"Publishers to Sue Texaco," Library Journal 110 (15 June 1985): 15.

[8]American Geophysical Union v. Texaco Inc., 802 F. Supp. 1 (S.D.N.Y. 1992).

[9]Barbara Quint, "End of the World," Wilson Library Journal 67 (December 1992): 79-81.

[10]Evan St. Lifer, "Publishers of Science Journals Win Copyright Fair Use Ruling," Library Journal 117 (1 September 1992): 110.

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[12]Laura Gasaway, "N.Y. Court Grants Texaco Appeal," Library Journal 118 (15 February 1993): 112-114.

[13]Calvin Reid, "Libraries Support Texaco Appeal of Photocopy Ruling," Publishers Weekly 240 (12 April 1993): 14.

[14]National Conference of Lawyers and Scientists, "How Does the Texaco Case Affect Photocopying by Scientists?" Science 270 (December 1995): 1450-1451; Andrew Lawler, "Texaco Offers to Settle Copyright Case," Science 268 (May 1995): 1127.

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[16]See, for example, "Texaco Pays $1M to Settle Copyright Case," Library Journal 120 (15 June 1995): 14.

[17]Goldie Blumenstyk, "Publishers Win Ruling on Copyright," Chronicle of Higher Education, 9 November 1994, A4. The judges tried to clarify the result: Judge Leval modified his written ruling twice; the court of appeals amended its opinion, and then superseded it with a new opinion nine months after the initial decision.

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[20]Irah Donner, "Photocopyright Infringement," Computer 28 (September 1995): 67-68.

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[29]Quint, "End of the World," 81; St. Lifer, "Publishers Win Fair Use Ruling," 110; "World of Trouble," 730.

[30]Walt Crawford and Michael Gorman, Future Libraries: Dreams, Madness, and Reality (Chicago: American Library Association, 1995), 157; Carol Tenopir and Donald King, "Setting the Record Straight on Journal Publishing: Myth vs. Reality," Library Journal 121 (15 March 1996): 32-35; Lee Ketcham and Kathleen Born, "Projecting the Electronic Revolution While Budgeting for the Status Quo," Library Journal 121 (15 April 1996): 45-51.

[31]Quint, "End of the World," 80.

[32]Laura Gasaway and Sarah Wiant, Libraries and Copyright: A Guide to Copyright Law in the 1990s (Washington, D.C.: Special Libraries Association, 1994), 48.

[33]Gasaway, "Wide Impact Seen," 21.

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[35]Gasaway, "Photocopying Ruling Affects For-Profit Sector," 12.

[36]Tenopir and King, "Setting the Record Straight," 34.

[37]Gasaway, "Photocopying Ruling Affects For-Profit Sector," 12.

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[44]Lee Nemchek, "Copyright Compliance by Law Firms (17 U.S.C. Sec. 108): An Ethical Dilemma for Librarians," Law Library Journal 83 (Fall 1991): 653-683.

[45]Alicia Kehrig, "Copyright Compliance by Law Firm Libraries" (Master's research paper, Kent State University, 1993).

[46]"NII Task Force Issues Preliminary Report," Bulletin of the American Society for Information Science 20 (August/September 1994): 2-4.

[47]National Conference of Lawyers and Scientists, "How Does the Texaco Case Affect Photocopying By Scientists?" 1451.

[48]There is, in fact, a dearth of studies about copyright in the context of special libraries. See, generally, Ellis Mount, Special Libraries and Information Centers: An Introductory Text, 3d ed. (Washington, D.C.: Special Libraries Association, 1995), 27-28, 125-126.

[49]Joanna Zakalik, ed., Directory of Special Libraries and Information Centers, 17th ed. (Detroit: Gale Research, 1994).

[50]Leo Egghe and Ronald Rousseau, Introduction to Informetrics: Quantitative Methods in Library, Documentation and Information Science (Amsterdam: Elsevier, 1990), 77; Barbara Moran, "Survey Research for Librarians," Southeastern Librarian 35 (Fall 1985): 78-81.

[51]A general rule of thumb for a survey sample size is about 200. Helen Gothberg, "The Library Survey: A Research Methodology Rediscovered," College & Research Libraries 51 (November 1990): 553-559.

[52]Gothberg, "The Library Survey," 556.

[53]One respondent reported that its corporate lawyers had concluded no license was necessary; another respondent concluded simply that Texaco was inapplicable to its situation.

[54]One library which has ordered multiple subscriptions has also withdrawn from a cooperative journal-sharing consortium with other institutions.

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APPENDIX A

School of Library and Information Science
(216) 672-2782
Fax 216-672-7965

Kent STATE UNIVERSITY
P.O. Box 5190 Kent, Ohio 44242-0001

Re: Reaction to the Texaco Fair Use Ruling Among Special Libraries Affiliated with For-Profit Enterprises

June 5, 1996

Dear Librarian:

I am a graduate student in the School of Library and Information Science at Kent State University. As a requirement for the completion of my master's degree I am conducting a nationwide study of the ways in which special libraries have reacted to the federal court rulings in the Texaco fair use lawsuit. Several commentators have predicted that the Texaco case could have significant repercussions for special libraries affiliated with corporations and other for-profit enterprises. This study will provide useful data to evaluate those predictions. However, an adequate response rate from you, the librarians, is a prerequisite to any meaningful conclusions.

Confidentiality and anonymity will be respected. You do not need to sign your name on the questionnaire, and individual responses will be not be circulated in any way. Your participation is, of course, voluntary and there is no penalty if you choose not to participate in the study. You may withdraw from participation at any time. Nonetheless, I hope you will take a minute to complete the questionnaire. The results of the study will be made available to individual participants upon request.

If you have any questions about the study, please feel free to e-mail me at dlodwick@phoenix.kent.edu. Alternatively, you may telephone me at (330) 672-2782 or Dr. Marcia Lei Zeng, my research adviser, at (330) 672-2782. Any additional questions regarding research at Kent State University may be directed to Dr. M. Thomas Jones of the Office of Research and Sponsored Programs at (330) 672-2851.

Thank you very much for you cooperation; it is greatly appreciated. Please return the questionnaire in the enclosed self-addressed envelope to me at the following address:

David Lodwick
School of Library & Information Science
Kent State University
Kent, OH 44242

Very truly yours,

David Lodwick
Graduate Student

BEST COPY AVAILABLE

Re: Reaction to the Texaco Fair Use Ruling Among Special Libraries
Affiliated with For-Profit Enterprises

Questionnaire

1. Have you heard or read about federal court decisions concerning the scope of fair use when photocopying journal articles (American Geophysical Union v. Texaco Inc.)?

Yes ____ No ____

(If you have not heard or read anything about federal court decisions concerning the scope of fair use when photocopying journal articles, and have not reacted to those decisions in any way, you may stop here and return the questionnaire.)

2. Has your library taken any of the following actions in response to developments in fair use law since 1992? Alternatively, are any of these actions in the planning stage or under consideration at your library?

If you have not taken a particular action in response to recent developments in fair use law, and have not considered it, leave both options blank and move to the next item on the list. This study is concerned only with your reactions to the Texaco decisions. No assumptions will be made concerning your existing procedures. (Thus, for example, if you never routed journals and therefore leave the first question blank, the study will not erroneously assume that you continue to route journals.)

Please read each item and mark all of the ones that apply to your library.

a. Stop routing journals.
Did it ____ Considering it ____

b. Stop routing tables of contents, title pages, or abstracts.
Did it ____ Considering it ____

c. Ban all photocopying by non-librarians.
Did it ____ Considering it ____

d. Purchase a photocopying license from Copyright Clearance Center.
Did it ____ Considering it ____

e. Negotiate photocopying permission directly with a publisher.
Did it ____ Considering it ____

f. Negotiate photocopying permission directly with an author.
Did it ____ Considering it ____

g. Order multiple subscriptions of journals, for internal distribution.
Did it ____ Considering it ____

h. Encourage researchers to order their own personal subscriptions.
Did it ____ Considering it ____

i. Cancel (one or more) journal subscriptions.
Did it ____ Considering it ____

j. Explore the availability of electronic (Internet) journals.
Did it ____ Considering it ____

k. Obtain journal articles from a commercial document delivery service.
Did it ____ Considering it ____

l. Explore online full-text article databases.

Did it ____ Considering it ____

m. Contact a legislator about the copyright law.

Did it ____ Considering it ____

n. Contact a library association about the copyright law.

Did it ____ Considering it ____

o. Contact a scientific or trade association about the copyright law.

Did it ____ Considering it ____

p. Order reprints of articles.

Did it ____ Considering it ____

q. Order back issues of journals.

Did it ____ Considering it ____

r. Establish new internal photocopying policies or procedures.

Did it ____ Considering it ____

s. Conduct educational seminars for employees regarding copyright.

Did it ____ Considering it ____

t. Increase use of interlibrary loan.

Did it ____ Considering it ____

u. Decrease use of interlibrary loan.

Did it ____ Considering it ____

v. Close the library.

Did it ____ Considering it ____

3. If, in response to developments in fair use law since 1992, your library has taken some action other than those listed above, please describe the action(s) taken:

_____

_____.

4. If, in response to developments in fair use law since 1992, your library has planned, or is considering, some action other than those listed above, please describe the action(s) under consideration:

_____

_____

Thank you for your help. Please return the completed questionnaire to:

David Lodwick
School of Library & Information Science
Kent State University
Kent, OH 44242

A self-addressed, stamped envelope is enclosed.